

AMENDED IN SENATE JANUARY 12, 2010

AMENDED IN SENATE JANUARY 11, 2010

AMENDED IN SENATE MAY 11, 2009

AMENDED IN SENATE APRIL 16, 2009

## SENATE BILL

**No. 356**

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### **Introduced by Senator Wright**

**(Coauthors: Senators Calderon, Correa, DeSaulnier, and Dutton)**

(Coauthors: Assembly Members Arambula, DeVore, Jeffries, Niello,  
Nielsen, Silva, Smyth, and Solorio)

February 25, 2009

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An act to amend Sections ~~11350, 11350.3, and 11357~~ *11350 and 11350.3* of the Government Code, relating to regulations.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 356, as amended, Wright. Regulations: small businesses.

~~(1) The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies. The act requires that the notice of proposed adoption, amendment, or repeal of a regulation include prescribed information relating to certain determinations, including mandates on local agencies or school districts and significant, statewide adverse economic impacts directly affecting business. The act also requires the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that any agency is required to use in making the determinations relating to mandates on local agencies or school districts, as specified.~~

~~This bill would also require the Department of Finance to adopt and update, as necessary, instructions prescribing the methods that any agency is required to use in making the determinations relating to significant, statewide adverse economic impacts directly affecting business, as specified.~~

~~(2) The~~

*The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies. The act authorizes any interested person to obtain a judicial declaration as to the validity of specified regulations or orders of repeal, by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure.*

This bill would specify that an interested person includes, but is not limited to, a small business or an organization or trade association whose members are affected by the regulation.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11350 of the Government Code is  
2 amended to read:  
3 11350. (a) Any interested person, including, but not limited  
4 to, a small business or an organization or trade association whose  
5 members are affected by the regulation, may obtain a judicial  
6 declaration as to the validity of any regulation or order of repeal  
7 by bringing an action for declaratory relief in the superior court  
8 in accordance with the Code of Civil Procedure. The right to  
9 judicial determination shall not be affected by the failure either to  
10 petition or to seek reconsideration of a petition filed pursuant to  
11 Section 11340.7 before the agency promulgating the regulation or  
12 order of repeal. The regulation or order of repeal may be declared  
13 to be invalid for a substantial failure to comply with this chapter,  
14 or, in the case of an emergency regulation or order of repeal, upon  
15 the ground that the facts recited in the finding of emergency  
16 prepared pursuant to subdivision (b) of Section 11346.1 do not  
17 constitute an emergency within the provisions of Section 11346.1.  
18 (b) In addition to any other ground that may exist, a regulation  
19 or order of repeal may be declared invalid if either of the following  
20 exists:

1 (1) The agency's determination that the regulation is reasonably  
2 necessary to effectuate the purpose of the statute, court decision,  
3 or other provision of law that is being implemented, interpreted,  
4 or made specific by the regulation is not supported by substantial  
5 evidence.

6 (2) The agency declaration pursuant to paragraph (8) of  
7 subdivision (a) of Section 11346.5 is in conflict with substantial  
8 evidence in the record.

9 (c) The approval of a regulation or order of repeal by the office  
10 or the Governor's overruling of a decision of the office  
11 disapproving a regulation or order of repeal shall not be considered  
12 by a court in any action for declaratory relief brought with respect  
13 to a regulation or order of repeal.

14 (d) In a proceeding under this section, a court may only consider  
15 the following evidence:

16 (1) The rulemaking file prepared under Section 11347.3.

17 (2) The finding of emergency prepared pursuant to subdivision  
18 (b) of Section 11346.1.

19 (3) An item that is required to be included in the rulemaking  
20 file but is not included in the rulemaking file, for the sole purpose  
21 of proving its omission.

22 (4) Any evidence relevant to whether a regulation used by an  
23 agency is required to be adopted under this chapter.

24 SEC. 2. Section 11350.3 of the Government Code is amended  
25 to read:

26 11350.3. Any interested person, including, but not limited to,  
27 a small business or an organization or trade association whose  
28 members are affected by the regulation, may obtain a judicial  
29 declaration as to the validity of a regulation or order of repeal  
30 which the office has disapproved pursuant to Section 11349.3 or  
31 11349.6, or of a regulation that has been ordered repealed pursuant  
32 to Section 11349.7 by bringing an action for declaratory relief in  
33 the superior court in accordance with the Code of Civil Procedure.  
34 The court may declare the regulation valid if it determines that the  
35 regulation meets the standards set forth in Section 11349.1 and  
36 that the agency has complied with this chapter. If the court so  
37 determines, it may order the office to immediately file the  
38 regulation with the Secretary of State.

39 ~~SEC. 3. Section 11357 of the Government Code is amended~~  
40 ~~to read:~~

1     ~~11357. (a) The Department of Finance shall adopt and update,~~  
2     ~~as necessary, instructions for inclusion in the State Administrative~~  
3     ~~Manual prescribing the methods that any agency subject to this~~  
4     ~~chapter shall use in making the determinations and estimates~~  
5     ~~required by paragraphs (5) to (10), inclusive, of subdivision (a) of~~  
6     ~~Section 11346.5. The instructions shall include, but need not be~~  
7     ~~limited to, the following:~~

8     ~~(1) Guidelines governing the types of data or assumptions, or~~  
9     ~~both, that may be used, and the methods that shall be used, to~~  
10    ~~calculate the estimate of the cost or savings to public agencies or~~  
11    ~~small businesses mandated by the regulation for which the estimate~~  
12    ~~is being prepared.~~

13    ~~(2) The types of direct or indirect costs and savings that should~~  
14    ~~be taken into account in preparing the estimate.~~

15    ~~(3) The criteria that shall be used in determining whether the~~  
16    ~~cost of a regulation must be funded by the state pursuant to Section~~  
17    ~~6 of Article XIII B of the California Constitution and Part 7~~  
18    ~~(commencing with Section 17500) of Division 4.~~

19    ~~(4) The criteria that shall be used in determining whether the~~  
20    ~~cost of a regulation will have a significant, statewide adverse~~  
21    ~~economic impact on businesses.~~

22    ~~(5) The format the agency preparing the estimate shall follow~~  
23    ~~in summarizing and reporting its estimate of the cost or savings~~  
24    ~~to state and local agencies, school districts, small businesses, and~~  
25    ~~in federal funding of state programs that will result from the~~  
26    ~~regulation.~~

27    ~~(b) Any action by the Department of Finance to adopt and~~  
28    ~~update, as necessary, instructions to any state or local agency for~~  
29    ~~the preparation, development, or administration of the state budget,~~  
30    ~~including any instructions included in the State Administrative~~  
31    ~~Manual, shall be exempt from this chapter.~~

32    ~~(c) The Department of Finance may review any estimate~~  
33    ~~prepared pursuant to this section for content including, but not~~  
34    ~~limited to, the data and assumptions used in its preparation.~~

35    ~~SEC. 4. The changes made to the Government Code by Sections~~  
36    ~~1 to 3, inclusive, of this act at the 2009–10 Regular Session of the~~  
37    ~~Legislature do not affect any regulation that is adopted pursuant~~

1 ~~to, and in compliance with, a law that is in effect on, before, or~~  
2 ~~after January 1, 2011.~~

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